

EXHIBIT 21

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF OHIO

3 EASTERN DIVISION

MDL No. 2804

Case No. 17-md-2804

HIGHLY CONFIDENTIAL

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

12 REMOTE VIDEO TAPE DEPOSITION OF LINDSAY BURCKHALTER

13 August 11, 2023
14 10:06 a.m. to 2:28 p.m.

REPORTED BY ANITA KORNBURGER
REGISTERED PROFESSIONAL REPORTER

* * * * * * * * * * * * * * * * * * * *

1 A P P E A R A N C E S

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8
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19
20 ALSO PRESENT: Brannen Wilson, Publix
20 Bill Hammond, Publix
21 Jonathan Jaffe
22
23
24

1

I N D E X

2

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Examination by	Page
Ms. Conroy.	5

4

5

E X H I B I T S

6

7	Exhibit No.	Description	Page Identified
8	1	Notice.	48
9	2	Deposition notes.	49
10	3	Chapter 8, Regulations and Associated Publix Policies.	75
11	4	Pharmacy advocacy meetings.	112
12	5	Publix Opioid Task Force PowerPoint.	123
13	6	P-PUB 507.	130
14	7	E-mail from Kimberly Bone.	140

16

17 (Original exhibits attached to original transcript.
Copies provided to all counsel.)

18

19

20

R E Q U E S T S

21

22

(There were no requests made.)

23

24

1 TRANSCRIPT OF PROCEEDINGS

2 THE VIDEOGRAPHER: Good morning. We are
3 now on the record. My name is Bill Geigert. I'm
4 the videographer for Golkow Litigation Services.

5 Today's date is August 11, 2023,
6 and the time is 10:06 a.m.

7 This remote video deposition is
8 being held in the matter of the National
9 Prescription Opiate Litigation, in the United
10 States District Court, Northern District of Ohio,
11 Eastern Division.

12 The deponent is Lindsay
13 Burckhalter.

14 All parties to this deposition are
15 appearing remotely and have agreed to the witness
16 being sworn in remotely. Due to the nature of
17 remote reporting, please pause briefly before
18 speaking to ensure all parties are heard
19 completely.

20 All counsel will be noted on the
21 stenographic record.

22 The court reporter is Anita
23 Kornburger, and she will now swear in the witness.

24 LINDSAY BURCKHALTER, called as a

1 witness herein, having been first duly sworn on
2 oath, was examined and testified as follows:

3 E X A M I N A T I O N

4 BY MS. CONROY:

5 Q. Good morning, Ms. Burckhalter. My name
6 is Jayne Conroy, and I'm from Simmons Hanly Conroy,
7 and I represent plaintiffs in this case. And in
8 this case it's Cobb County.

9 Have you ever been deposed before?

10 A. No, ma'am.

11 Q. Okay. Do you know what a plaintiff is
12 versus a defendant?

13 A. The person asking the questions
14 representing the person doing the lawsuit?

15 Q. That would be the -- the lawyer. But the
16 plaintiff is the -- is the entity that's bringing
17 the lawsuit. And --

18 A. Correct.

19 Q. -- in this case, Publix is the defendant,
20 okay?

21 A. Okay.

22 Q. And I'm going to ask questions, and
23 it's -- thank you for being on a Zoom today. It
24 makes it a little bit easier for all of us.

1 Q. Correct.

2 A. So my -- I don't know that I have the
3 same definition of diversion that you're referring
4 to. So -- what do you mean?

5 Q. What's your def -- what do you believe
6 diversion of opioids is?

7 A. So I use that more as, you know, theft.

8 Q. And who taught you that?

9 A. I don't know that anybody taught me that.

10 That's just how I've always understood diversion
11 to -- what I've always understood it to mean.

12 Q. So you would not identify an opioid that
13 was going to an individual who, for example, forged
14 a prescription, you would not identify that as
15 diversion?

16 MR. LARSON: Object to form. Go ahead,
17 Lindsay.

18 THE WITNESS: I would not identify that
19 necessarily as diversion in my terms of the
20 definition.

21 BY MS. CONROY:

22 Q. To you, diversion of an opioid is -- is
23 strictly if it's stolen out of a pharmacy or a
24 truck or something like that?

1 A. That's how I interpret diversion.

2 Q. So when you take a look back up on the
3 screen of the red flag, the prescriber's practice
4 is not near where the patient resides. Why is a
5 pharmacist concerned about that?

6 A. Well, I think a pharmacist would have to,
7 again, do some extra research on that. That could
8 be totally normal. That could be that it's a
9 specialized treatment place. That could be that
10 this patient that they know and have treated for a
11 long time has moved, you know, 25 miles away, but
12 has such a strong relationship with the pharmacy
13 team that they want to fill their prescriptions
14 there still.

15 That could mean nothing, or it could
16 mean that, you know, this person is driving too far
17 to get a prescription, and they've passed other
18 pharmacies. And we just need to dig into that
19 and -- and figure it out.

20 Q. I understand the reasons why it could be
21 a good prescription. I'm trying to understand why
22 someone who passed a lot of other pharmacies on
23 their way to Publix, why that might be a suspicious
24 prescription.

1 Q. Okay. That's not -- all I'm getting at,
2 is that doesn't come within your responsibilities.
3 You would be --

4 A. Right.

5 Q. -- told if it was going to happen? You
6 wouldn't be making the decision?

7 A. That's -- that's correct.

8 Q. Do you know if -- well, let -- you see
9 the checklist? It's a little bit easier to
10 read -- sorry, going back to Exhibit 623. It's
11 the -- right there. There we go.

12 Do you know if Publix has anything
13 like this available for their pharmacists?

14 MR. LARSON: Object to form. Go ahead.

15 THE WITNESS: I'm not aware of a
16 dispensing good faith checklist.

17 BY MS. CONROY:

18 Q. Are you aware of anything that allows you
19 to check off, for example, like this first bullet
20 point, that a valid government photo ID was copied
21 and attached that -- and that, if available in your
22 state, the PDMP has been reviewed, anything like
23 that that's not called a good faith dispensing
24 checklist but allows pharmacists to check off as

1 they go through certain activities?

2 A. Of dispensing a controlled substance
3 prescription?

4 Q. Correct.

5 A. I'm not aware of a document, a checklist
6 document.

7 Q. Okay. Thank you. Now I'd like to talk a
8 little bit about time, and what happens in a
9 pharmacy. And let's talk a little bit about the
10 pharmacies in Georgia. You have 77-hour pharmacies
11 and 70-hour pharmacies; is that correct?

12 A. Yes, ma'am.

13 Q. Okay. And can you explain what
14 those -- what that means? What's a 77-hour
15 pharmacy?

16 A. The hours of the pharmacy are nine to
17 nine, Monday through Friday, nine to seven on
18 Saturday, and eleven to six on Sunday. If you add
19 all that up over two weeks, it totals 77 hours.

20 Q. Okay. And the pharmacists in a 77-hour
21 pharmacy work twelve-hour shifts; is that correct?

22 A. They work twelve-hour shifts Monday
23 through Friday, ten-hour shifts on Saturday, and
24 seven-hour shifts on Sunday.

1 Q. Okay. Let me just ask a series of
2 questions, and I'm talking right now as of today,
3 August 11th of 2023.

4 Publix, with respect to their pharmacy
5 and their pharmacist, has no checklist to check
6 off -- or let me start again.

7 As of August 11th of 2023, Publix has
8 no written red flag checklist for their pharmacists
9 to complete?

10 A. Are you referencing the list similar to
11 the Walgreens list?

12 Q. Well, that's -- you could think about
13 that, but it could look like something else too.

14 A. Publix does not have a checklist for red
15 flag analysis, if that's your question.

16 Q. That's as of today; right?

17 A. Not that I'm aware of as of today.

18 Q. And as of today, August 11, 2023, Publix
19 does not track refusals to fill controlled
20 substance prescriptions, including opioid
21 prescriptions?

22 MR. LARSON: Object to form. Go ahead,
23 Lindsay.

24 THE WITNESS: Publix does not have a

1 spreadsheet tracking refusals to fill as of today.

2 BY MS. CONROY:

3 Q. You just confused me with "spreadsheet."

4 So is there some other way that Publix is tracking
5 refusals to fill as of today?

6 A. If a pharmacist has made a note in

7 Enterprise on a patient's profile, the note would
8 remain there. But no other way of tracking
9 refusals to fill.

10 Q. And as of today, does Publix track a note
11 that might be in Enterprise? Is that something
12 that's tracked, a refusal to fill that's noted in
13 Enterprise?

14 A. When you say "track," what do you mean by
15 that?

16 Q. Followed. Collected. Analyzed, that
17 sort of thing. I appreciate that the note might be
18 there, but is Publix as a corporation looking and,
19 for example, doing a query and saying tell me how
20 many notes there are related to a refusal to fill?

21 A. Not that I'm aware of.

22 Q. Okay. And as of today, August 11th of
23 2023, Publix does not document due diligence
24 related to the clearance of red flags?

1 MR. LARSON: Object to form. Go ahead.

2 THE WITNESS: Publix does not -- so

3 re -- can you restate that sentence for me? Publix
4 does not --

5 BY MS. CONROY:

6 Q. Document due diligence related to
7 clearing red flags.

8 MR. LARSON: Same objection. Go ahead.

9 THE WITNESS: There's not documentation
10 related to clearing red flags. However, if a
11 pharmacist feels -- fills a prescription, then they
12 have cleared those red flags.

13 BY MS. CONROY:

14 Q. Okay. And just very similar to that last
15 question, Publix doesn't require the documentation
16 of due diligence related to clearing red flags?
17 That's true as well; correct?

18 MR. LARSON: Object to form. Go ahead,
19 Lindsay.

20 THE WITNESS: Publix does not require
21 documentation of clearing red flags.

22 BY MS. CONROY:

23 Q. And as of today, August 11th of 2023,
24 Publix does not block prescribers from having their

1 prescriptions filled by their patients; is that
2 correct?

3 MR. LARSON: Object to form. Go ahead,
4 Lindsay.

5 THE WITNESS: If that prescriber has,
6 like, a DEA that's inactive, they will be blocked,
7 but --

8 BY MS. CONROY:

9 Q. I'm talking about -- so they would be
10 blocked when the pharmacist attempts to fill the
11 prescription; correct?

12 A. If they do not have a DEA, that's
13 correct.

14 Q. Right. But does -- does Publix as an
15 entity block particular prescribers, for whatever
16 reason, that is then communicated to Publix
17 pharmacists?

18 MR. LARSON: Object to form. Go ahead.

19 THE WITNESS: Publix does not communicate
20 information about prescribers. Is that what you're
21 asking me?

22 BY MS. CONROY:

23 Q. I'm asking whether -- I understand that
24 if the DEA number is not correct, you cannot fill

1 the prescription.

2 A. Right.

3 Q. What I'm asking about is something a
4 little bit different.

5 A. Okay.

6 Q. That Publix -- does Publix block -- a
7 wholesale block of a prescriber and say we will not
8 allow any Publix pharmacy to fill a prescription
9 for, for example, Dr. Smith?

10 MR. LARSON: Same objection. I'm sorry.

11 Go ahead.

12 THE WITNESS: No, that -- that would be
13 considered practicing pharmacy. So no, Publix does
14 not do that.

15 BY MS. CONROY:

16 Q. Okay. And as of today, August 11th of
17 2023, controlled substances, including opioids, are
18 included in your bonus calculations for pharmacists
19 and other Publix employees above them; is that
20 true?

21 MR. LARSON: Object to form. Go ahead,
22 Lindsay.

23 THE WITNESS: Publix employees above
24 them?

1 BY MS. CONROY:

2 Q. Right. For example, like yourself.

3 A. You're saying that I get bonused for
4 their prescription filling?

5 Q. Well, if you are -- well, let me ask it
6 this way.

7 When we were looking at the bonus
8 structure, the supervisor that's in that chain
9 would also get a bonus, correct, based on the
10 profitability of -- of his or her stores that she's
11 monitoring and the number of scripts using the
12 calculation?

13 A. No.

14 Q. So the only -- the only individuals
15 getting bonused are the pharmacists?

16 A. For the quarterly retail bonuses, yes.

17 Q. Okay. So let me change the question
18 then.

19 So as of today, August 11th of 2023,
20 controlled substances, including opioids, are
21 included in Publix's bonus calculations for
22 pharmacists?

23 A. All prescriptions are included in the
24 bonus calculations.